

In the Matter of Daniel Kim, County Correction Officer (S9999K), Bergen County
CSC Docket No. 2010-3138
(Civil Service Commission, decided July 21, 2010)

The Bergen County Sheriff's Office, represented by Thomas J. Quirico, Esq., appeals the attached decision of the Division of State and Local Operations (SLO) which restored the name of Daniel Kim to the County Correction Officer (S9999K), Bergen County, eligible list.

Kim, a veteran, appeared in the 23rd position on the December 24, 2008 certification of the County Correction Officer (S9999K), Bergen County, eligible list. According to the certification, Notices of Certification (Notices) were sent out on January 2, 2009 with instructions to the recipients to notify the appointing authority within five days if they were interested in being considered for the position. The appointing authority requested the removal of Kim's name from the subject eligible list based on his failure to respond to the Notice. Kim filed an appeal with SLO, explaining that, at the time the Notices were sent, he was deployed to Iraq and did not receive the Notice. In support, Kim submitted a copy of his military orders, demonstrating that he was ordered to active duty on June 20, 2008, he was released from active duty on July 27, 2009, and he served in Iraq from August 30, 2008 to May 30, 2009. Therefore, SLO restored the appellant's name to the subject eligible list and returned the December 24, 2008 certification to the appointing authority in order that he may be considered for appointment.

On appeal to the Civil Service Commission (Commission), the appointing authority argues that Kim "failed to respond as required by rule and does not have a valid reason for said failure."

CONCLUSION

N.J.A.C. 4A:4-4.7(a)6 provides that an eligible's name may be removed from a list for "non-compliance with the instructions listed on the notice of certification." *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In the instant matter, Kim's name was removed from the County Correction Officer (S9999K), Bergen County, eligible list based on his failure to respond to the January 2, 2009 Notice. However, on appeal, Kim submitted documentation demonstrating that he was on active military duty from June 20, 2008 to July 27, 2009 and was deployed to Iraq from August 30, 2008 to May 30, 2009. Contrary to

the appointing authority's assertion, Kim's deployment provides a valid reason for his failure to respond to the Notice. Accordingly, the appointing authority has failed to present sufficient justification for removing his name from the subject eligible list, and SLO correctly determined that Kim's name should be restored and considered for appointment from the December 24, 2008 certification of the eligible list.¹

ORDER

Therefore, it is ordered that this appeal be denied. It is further ordered that the appointing authority properly dispose of the December 24, 2008 certification within 30 days of issuance of this decision.

In the event that the appointing authority fails to make a good faith effort to fully comply with this decision within 30 days of issuance of this decision, the Commission orders that a fine be assessed against the appointing authority in the amount of \$100 per day beginning on the 31st day from issuance of this decision, continuing for each day of continued violation up to a maximum of \$10,000.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

¹ See also, *In the Matter of Gary Colombo* (CSC, decided July 7, 2010) (Commission upheld the restoration of another veteran eligible to the December 24, 2008 certification and ordered that the certification be properly disposed within 30 days).